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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/072,178	06/24/2002	Joe Dale Reed	REED0908	6613

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EXAMINER

LOPEZ, MICHELLE

ART UNIT PAPER NUMBER

3721

DATE MAILED: 04/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/072,178

Applicant(s)

REED, JOE DALE

Examiner

Michelle Lopez

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 November 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2 and 3 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2 and 3 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 6/24/03 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 19, 2004 has been entered.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 3 is rejected under 35 U.S.C. 102(b) as being anticipated by Gerbe (3,138,907):

Gerbe discloses an automatic bag opener and dispenser, comprising: an enclosure having a front face, a top, a bottom, sides, and a back surrounding an interior of the enclosure as shown in Fig. 2; an upper bag hanger 16 comprising a pair of forwardly extending arms supported on an upper portion of the front face and a lower bag hanger 23 supported on a lower portion of the front face of the enclosure respectively; a first opening 10 in the front face for passage of blowing air out of the enclosure; at least one second opening in the enclosure at the vicinity of 17 for passage of air drawn into the enclosure; a blower unit 8 supported on the interior of the enclosure and configured to draw air from the at least one second opening and to force air from the first opening on the front face; an airflow outlet guide on the front face in superposed relation to the first opening, the airflow outlet having a first guide wall at the vicinity of 17 substantially

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parallel to the front face; and an air flow guide at the vicinity of 21A, as shown in Fig.2, mounted on the front face and configured to direct the blowing air at a front bag opening, wherein the air flow guide has a second guide wall fixedly supported at an acute angle on the front face and extending away from the airflow outlet and toward a plane of the first guide wall.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gerbe (3,138,907) in view of the Admitted Prior Art.

Gerbe discloses an automatic bag opener and dispenser, comprising: an enclosure having a front face, a top, a bottom, sides, and a back surrounding an interior of the enclosure as shown in Fig. 1; an upper bag hanger 16 comprising a pair of forwardly extending arms supported on an upper portion of the front face and a lower bag hanger 23 supported on a lower portion of the front face of the enclosure respectively; a first opening 10 in the front face for passage of blowing air out of the enclosure as shown in Fig.2; at least one second opening in the enclosure at the vicinity of 17 for passage of air drawn into the enclosure; a blower unit 8 supported on the interior of the enclosure and configured to draw air from the at least one second opening and to force air from the first opening on the front face; an airflow outlet guide on the front face in superposed relation to the first opening as shown in Fig. 2, the airflow outlet having a first guide

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wall at the vicinity of 17 substantially parallel to the front face mounted on the front face and configured to direct the blowing air at a bag opening.

Gerbe discloses a mechanical device via plate 23 for the purpose of controlling the supply of bag opening air, but does not disclose a motion sensor mounted on the top of the enclosure and operably connected to the blower unit to automatically turn on the blower unit when motion of a user is sensed by the motion sensor when the user approaches the bag opener and dispenser.

As was stated in the last Office Action, Examiner takes Official Notice of the well-known act of providing devices with a motion sensor for the purpose of automatically activating the device, specially a blower unit, when motion of a user is sensed. In view of these assertions made by the Examiner in the last Office Action and Applicants silence regarding them, the motion sensor feature is considered as an admission of prior art. Therefore, it would have been obvious to one having ordinary skill in the art to have provided Gerbe's invention including a motion sensor mounted on the enclosure in order to sense the presence of a user and automatically activating the blower unit.

4. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Osborn (4,085,822) in view of the Admitted Prior Art.

Osborn discloses an automatic bag opener and dispenser, comprising: an enclosure having a front face, a top, a bottom, sides, and a back surrounding an interior of the enclosure as shown in Fig. 2; an upper bag hanger (shown in Fig. 2) comprising a pair of forwardly extending arms supported on an upper portion of the front face and a lower bag hanger 20,24 supported on a lower portion of the front face of the enclosure respectively; a first opening in the front face at the vicinity of 16 for passage of blowing air out of the enclosure; at least one second opening via

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23 in the enclosure for passage of air drawn into the enclosure; a blower unit 21 supported on the interior of the enclosure and configured to draw air from the at least one second opening and to force air from the first opening on the front face; an airflow outlet guide 23 on the front face in superposed relation to the first opening as shown in Fig. 2, the airflow outlet having a first guide wall 22 substantially parallel to the front face mounted on the front face and configured to direct the blowing air at a bag opening.

Osborn does not disclose a motion sensor mounted on the top of the enclosure and operably connected to the blower unit to automatically turn on the blower unit when motion of a user is sensed by the motion sensor when the user approaches the bag opener and dispenser.

As was stated in the last Office Action, Examiner takes Official Notice of the well-known act of providing devices with a motion sensor for the purpose of automatically activating the device, specially a blower unit, when motion of a user is sensed. In view of these assertions made by the Examiner in the last Office Action and Applicants silence regarding them, the motion sensor feature is considered as an admission of prior art. Therefore, it would have been obvious to one having ordinary skill in the art to have provided Osborn's invention including a motion sensor mounted on the enclosure in order to sense the presence of a user and automatically activating the blower unit.

### ***Response to Arguments***

5. Applicant's arguments filed November 19, 2004 have been fully considered but they are not persuasive.

6. Applicant contends that Osborn does not show upper and lower bag hangers supported on upper and lower portions of the front face.

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7. However, Examiner contends that Osborn does show upper and lower bag hangers supported on upper and lower portions of the front face as shown in Fig. 2.

*Conclusion*

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Williams'374, Santacrose'342, Membrino'676 and Hironaka'685 are cited to show related inventions.

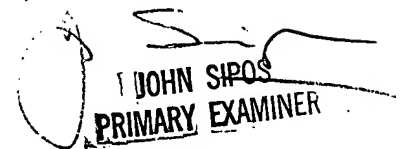
9. Hironaka (5,974,685) is cited to show the use of a motion sensor for the purpose of automatically activating a device, as a blower unit.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michelle Lopez whose telephone number is 571-272-4464. The examiner can normally be reached on Monday - Thursday: 8:00 am - 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

11. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ML

  
JOHN SIPOS  
PRIMARY EXAMINER